

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,) No. C 14-03401 EJD (PR)
Plaintiff,) ORDER OF DISMISSAL
v.)
KEVIN CHAPELL, et. al.,)
Defendants.)

Plaintiff, a state prisoner at San Quentin State Prison (“SQSP”), filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff’s motion for leave to proceed in forma pauperis will be granted in a separate written order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
 2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
 3 1988).

4 In its review, the court must identify any cognizable claims and dismiss any claims
 5 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or
 6 seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §
 7 1915A(b). Failure to state a claim is a grounds for dismissal before service under both
 8 sections 1915A and 1915(e)(2), as well as under Rule 12(b)(6). Dismissal for failure to
 9 state a claim is a ruling on a question of law. See Parks School of Business, Inc., v.
 10 Symington, 51 F.3d 1480, 1483 (9th Cir. 1995). “The issue is not whether plaintiff will
 11 ultimately prevail, but whether he is entitled to offer evidence to support his claim.”
 12 Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 14 elements: (1) that a right secured by the Constitution or laws of the United States was
 15 violated, and (2) that the alleged violation was committed by a person acting under the
 16 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

17 **B. Plaintiff's Claims**

18 Plaintiff claims that on August 28, 2013, he received his legal mail opened from
 19 the SQSP mail room. The mail was from the Monterey Superior Court. Plaintiff was
 20 interviewed on October 15, 2013, by supervisor Alex Lile, during which it was verified
 21 that D. McCall processed the mail and who could not verify whether the mail was “sent
 22 open” from the court. Plaintiff claims that Warden Kevin Chapell was aware that the
 23 mail was incorrectly processed by the mail room staff. (Compl. at 3.)

24 Liberally construed, it appears that Plaintiff is asserting a violation of his First
 25 Amendment right to send and receive mail. See Witherow v. Paff, 52 F.3d 264, 265 (9th
 26 Cir. 1995) (citing Thornburgh v. Abbott, 490 U.S. 401, 407 (1989)). A prison, however,
 27 may adopt regulations or practices which impinge on a prisoner’s First Amendment rights
 28 as long as the regulations are “reasonably related to legitimate penological interests.” See

Turner v. Safley, 482 U.S. 78, 89 (1987). The Turner standard applies to regulations and practices concerning all correspondence between prisoners and to regulations concerning *incoming* mail received by prisoners from non-prisoners. See Thornburgh, 490 U.S. at 413.

Prison officials may also institute procedures for inspecting “legal mail,” e.g., mail sent between attorneys and prisoners, see Wolff v. McDonnell, 418 U.S. 539, 576-77 (1974) (incoming mail from attorneys), and mail sent from prisoners to the courts, see Royse v. Superior Court, 779 F.2d 573, 574-75 (9th Cir. 1986) (outgoing mail to court). However, mail from the courts, as contrasted to mail from a prisoner’s lawyer, is not “legal mail,” such that prison officials may open and inspect mail to prisoner from courts outside prisoner’s presence. See Keenan v. Hall, 83 F.3d 1083, 1094 (9th Cir. 1996), amended, 135 F.3d 1318 (9th Cir. 1998).

Even if we construe the facts in the light most favorable to Plaintiff and assume that Defendants purposefully opened Plaintiff's mail from the courthouse outside of his presence, there was no violation of Plaintiff's First Amendment rights under Keenan. See West t v. Atkins, 487 U.S. at 48. Accordingly, Plaintiff's claim must be dismissed for failure to state a claim upon which relief may be granted.

CONCLUSION

For the reasons stated above, this action is DISMISSED for failure to state a claim upon which relief may be granted. See 28 U.S.C. § 1915A(b).

DATED: 11/26/2014


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
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JERRY SMITH,

Case Number: CV14-03401 EJD

Plaintiff,

CERTIFICATE OF SERVICE

v.

KEVIN CHAPELL, et al.,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/1/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jerry Smith H44485
San Quentin State Prison
San Quentin, CA 94974

Dated: 12/1/2014

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk